IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 692 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRASINGHJI BHAVUDHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 692 of 1987

MR JR NANAVATI for Petitioner No. 1-14

MR PREMAL JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/10/2002

ORAL JUDGEMENT

1. Heard ld. Senior Counsel Mr. Nanavati for the petitioners and Mr. Premal Joshi, ld. AGP for the

respondents. All these petitioners by invoking jurisdiction of this Court under Article 226 of the Constitution of India, moved the present petition seeking following main reliefs :-

"25(A) To issue a writ of mandamus and/or a writ and/or direction or order in the nature of mandamus directing the respondents to give petitioners the pay-scale of Rs.475-750 from 1st January, 1973 and in the alternative the pay-scale of the petitioners should be upgraded in a reasonable proportionate;

(B) To issue a writ of mandamus and/or a writ, order or direction in the nature of mandamus directing the respondents to amalgamate all three cadres into one or in the alternative amalgamate the cadre of Police Photographers and Assistant Photographers in one cadre and the cadre of Technical Assistants should be upgraded to the post of Assistant Photographers; "

2.1 The petitioners of this petition were serving in two different cadres namely Assistant Photographer and Technical Assistant in the pay-scale of Rs.350-560 & Rs.260-350 respectively in the police establishment of the respondent State. According to the petitioners, this classification of the cadre is arbitrary having regard to the nature and character of the functions and duties especially in reference to the cadre of Police Photographers serving with the department. On the date of petition, petitioner nos. 1 to 6 were serving in the cadre of Assistant Photographer and petitioner nos. 7 to 14 were serving as Technical Assistant in the above-referred two different pay-scales.

2.2 The scale of Assistant Photographer on the date of petition was Rs.380-600. It is contended that one Mr. R.D.Painter along with others had moved the petition under Article 226 of the Constitution of India before this Court in the year 1981 being Special Civil Application No. 2735/1981 contending that the Police Photographers serving with Forensic Science Laboratory (FSL for short) under the Police Department were getting pay-scale of Rs.475-750 and that having regard to the nature, character and functions performed by the Police Photographer of FSL and Police Photographers of Police Department, the Police Photographers working in FSL were

entitled to equal treatment in the matter of pay scale by applying principles of "equal pay for equal work" and accordingly prayed for grant of pay-scale of Rs.475-750 instead of pay-scale of Rs.380-600. After hearing the ld. counsel appearing for the petitioner and ld. AGP in the aforesaid petition, this Court allowed said petition vide oral judgment dated 16.9.1982, operative portion of which reads as under:-

" For the reasons stated in the accompanying copy enclosed Oral Judgment, the Court allows the petition and directs the respondents to upgrade the pay-scales of the petitioners from Rs.380-600 to Rs.475-750 with effect from the date on which the said scales were made available to the photographers working under the F.S.L.

The Court further orders that the backwages on the above computation shall be paid to the petitioners within a period of six weeks from the date of the receipt of the writ of this Court.

The Court accordingly makes the Rule absolute to the above extent with no order as to costs. "

2.3 Being aggrieved by the decision of the ld. Single Judge in the aforesaid writ petition, the respondent State preferred Letters Patent Appeal No.143/1983 before the Division Bench of this Court which ultimately came to be dismissed by the Division Bench vide its judgment dated 20.4.1983 confirming the impugned order passed by the ld. Single Judge.

3.1 Considering the contents of the present petition, it is clear that ratio and the finding recorded by this Court in the above decisions has given rise to the cause of the present petition. In other words, it can be said that the present petitioners are tempted to file present petition because of a favourable decision of this Court referred to above as, according to the petitioners, they are performing duties and are discharging functions similar to that of Police Photographer in the department.

3.2 It is the say of the petitioners that on the date of petition, there were 12 Police Photographers and 6 Assistant Photographers and there were 8 posts of Technical Assistants. The persons working with the photography section of the police department have to discharge mostly similar type of duties and functions and they have narrated the type of functions and duties being performed by the persons working with the photography

section of the police department in para-7 of the petition. According to the petitioners, duties and functions of the petitioners are of technical nature and they have to deal with important documents and articles relating to crime etc. and it requires high intelligence and caliber and special technical knowledge in photography. The grievance of the petitioners is that the State Government has failed in fixing the pay-scale of the present petitioners in view of the ratio of the decision of the Division Bench in LPA No.134/1983 which was very much available to the government in the year 1992. It is also the say of the petitioners that if by virtue of a direction issued by the Court the pay-scale of Police Photographers and Assistant Photographers both should have been upgraded to Rs. 475-750, the petitioners then would not have been even required to approach this Hon'ble Court by way of present petition and petition then wouldnot have seen the light of the day.

4. Ld. Senior Counsel Mr. Nanavati, by placing reliance on certain decisions, has submitted that the petitioners who were in the cadre of Assistant Photographers should be granted pay-scale of Police Photographers which is equal to pay-scale of Police Photographers working with FSL viz. Rs.475-750 and the action of the State Government in treating Assistant Photographers in different cadre, giving different pay-scale is discriminatory and violative of Articles 14 & 16 of the Constitution of India. It is argued that the petitioners serving in the cadre of Technical Assistants are obviously entitled to similar pay-scale or in the alternative they are entitled to the corresponding rise or say increase in the pay-scale.

5. On careful consideration of the duties and functions which are being performed by the Technical Assistants and relevant recruitment rules of all the three cadres, it is difficult for this Court to accept the argument of ld. Sr.Counsel Mr. Nanavati that Technical Assistants serving in photography section of police department should be granted pay-scale of Police Photographers working in the department. Ld. AGP Mr. Premal Joshi has taken me through all the three sets of recruitment rules which are relevant for the purpose and it is not legally possible to hold that Technical Assistants working in photography section of the police department are discharging similar functions and discharging duties compared to the functions and duties of Police Photographers serving with the department or both the cadres are having similar set of recruitment

rules.

6. Earlier, this petition was listed for Final Hearing in the month of August 2001 and the Court had passed following order on 17.8.2001 :-

" After hearing at some length, it has been suggested by both the learned advocate that in view of the report submitted by the Anomaly Committee and the Sub-Committee appointed by the Government to consider the report of Anomaly Committee and make necessary suggestions the matter be kept pending. It is hoped that within 3 months the Government will take some decision on the question. The matter be listed in December,2001."

7. Mr. Premal Joshi, ld. AGP appearing for the respondents, during the course of oral submissions, has fairly accepted that he has not received any instructions from the department as to whether the report of Anomaly Committee has been accepted by the State Government in the present case or not. This Court has granted 3 months' time to the State Government so that some decision on the question raised can be taken, but according to Mr. Joshi, State Government has not taken any decision on the recommendations made by the Anomaly Committee.

8. The stand taken by the government is that Recruitment Rules for all the three posts referred to by the petitioners in para-2 of the petition, are absolutely different and classifications of POLICE PHOTOGRAPHERS, ASSISTANT PHOTOGRAPHER & TA are also different. Qualifications for appointment on all the three cadres are also different, but the say of the Government in the reply affidavit runs contrary to the observations made by this Court in the above-referred decision of the ld. Single Judge and confirmed by the Division Bench. On the other hand, the Court feels that the State Government ought to have taken favourable decision in view of the recommendations made by the Anomaly Committee within a reasonable period of time. It is pertinent to note that Anomaly Committee has recommended to the State Government to amalgamate the cadre of PF & AF for all the purposes and has also recommended to prescribe similar educational qualification and experience making them eligible for recruitment. During the course of submissions, the Court was informed by the ld. counsel that at present the ratio between direct recruits and departmental promotion is 50 : 50. Ld. Sr.Counsel Mr. Nanavati has drawn my

attention to the fact that some of the petitioners have been promoted by the department in view of the policy and many of them have also retired from the service. Observations of this Court in the earlier decision squarely help the petitioners who were at the relevant point of time serving in the cadre of AF and it seems that Anomaly Committee had tried to consider the type of duties and nature of functions assigned to Police Photographers & Assistant Photographers while recommending the amalgamation of both the cadres. It is rightly argued that even much prior to the year 1986, the State Government ought to have taken decision of amalgamating both the cadres. The persons serving in any of the three cadres have not to discharge any supervisory functions and they are assigned personal work and duties in photography section. So, TECHNICAL ASSISTANT can legitimately claim for proportionate rise in the pay-scale in view of the nature of duties and work assigned to them.

9. Ld. counsel Mr. Premal Joshi has submitted that even if this Court is of the view that the petitioners who were serving in the cadre of AF should be granted any higher pay-scale then the State Government only should be so advised and appropriate decision should be left to the State Government and so far as Technical Assistants are concerned, even no such recommendation is required because Anomaly Committee has also not accepted the case of the Technical Assistants even after considering their say and representation made before the Committee. Mr. Joshi, ld. AGP has placed reliance on three different decisions. The first decision is in the case of State of Maharashtra v/s Association of Court Stenos, P.A., P.S. & Anr., reported in JT 2002(1) SC 55. However, the ratio of this decision would not help the respondent State because after considering the other decisions, aforesaid decision was delivered by applying the principle of "equal pay for equal work" and on evaluation of nature of duties discharged by the Court Stenographers, PA & PS, the Apex Court has held that conditions of service of such officers and servants of High Courts are governed by a set of rules made by the Chief Justice of the High Court and even the salaries and allowances, leave or pension of such officers could be determined by a set of rules to be framed by the Chief Justice of High Court. In the present case, recruitment rules are framed by the State of Gujarat. So far as recruitment rules of Photographers in FSL and Police Department are concerned, they are mostly similar and in view of number of posts and in light of number of district head-quarters, type of duties and functions assigned to Assistant Photographers,

the Assistant Photographers can legitimately make grievance before the Court that they are being discriminated and it seems that they have successfully pleaded their case before the Anomaly Committee also. The second decision of the Apex Court is in the case of State of Haryana v/s Haryana Civil Secretariat Personal Staff Association, reported in AIR 2002 SC 2589. This decision would apply to the case where the case is complex and the decision on which may have far-reaching impact on the State Administration. The Apex Court has observed in the cited decision that the Court normally not to interfere in such matters and should intervene only when government decision is patently irrational and even in such cases, the Court should avoid giving directions to the State Government to pay a particular scale of pay. The case on hand does not fall in the category of the case which can be said to be complex one or the case if decided against the State Government, would be having far-reaching impact on the State Administration. In the present case, inaction on the part of the Government is relevant. So, alleged irrationality is not under scrutiny at all, but the inaction or absence of will to take decision has indirectly compelled this Court to intervene in the matter and this Court is asked to grant appropriate relief in light of earlier decisions of this Court which are in favour of Police Photographers who were granted pay-scale of Police Photographers serving in FSL. The Committee appointed by the government itself has recommended for amalgamation of two different cadres in the same department even after reorganization of the districts in the State of Gujarat and creation of more police head-quarters in the State, the State Government could have taken prompt and appropriate decision of amalgamating these posts (cadres) as recommended by the Committee. However, without dealing with this aspect independently, this Court can positively issue a direction to the government to take appropriate steps in this regard especially in favour of the present petitioners who are serving in the cadre of Assistant Photographers. It is true that as held by the Apex Court in the third decision cited by ld. AGP Mr. Joshi in the case of State Bank of India and another v/s M Babu and others, reported in AIR 2002 SC 1955, the principle of "equal pay for equal work" cannot be judged by mere volume of work or type of work. There may be qualitative difference as regards the reliability and responsibility. Functions may be same, but the responsibility makes the difference. However, in the case on hand, Technical Assistants and Assistant Photographers have to discharge their functions personally allocated to them and most of

their duties are technical and they are not materially different so far as responsibility is concerned. As observed by this Court in the earlier decision, educational qualification vis-a-vis experience in the field of photography is more relevant. The degree of reliability of each individual working in the photography section of the police department is also important and relevant, but it is not the case of the State Government in the affidavit-in-reply that pay-scales of Assistant Photographers and Technical Assistants are different because of difference in standard of reliability expected from the individual servant or efficiency standard. This third decision of the Apex Court is in respect of the persons working in State Bank of India in the cadre of officers of the Bank. The facts of the cited case are materially different and so the cited decision also would not help the respondent State.

10. This Court accepts the say and submissions of ld. Sr.Counsel Mr. Nanavati which have been advanced in the course of oral submissions by placing alternative prayer that in view of the nature of duties and responsibility of Technical Assistants in the photography section of police department, there should not be very much difference in the pay-scales of Police Photographers and Technical Assistants working in the police department. It is alternatively submitted that this Court should direct the respondent State to give proportionate rise in the pay-scale to the Technical Assistants. The corresponding increase in the salary can reasonably be considered and appropriate decision requires to be taken in the matter at the earliest so far as Technical Assistants in photography section are concerned. The State Government is, therefore, directed to take decision within Six months from the date of receipt of the order of this Court so far as Technical Assistants working in photography section of police department are concerned so that gap between two different pay-scales can be taken care of.

11. So far as Assistant Photographers are concerned, their petition requires to be allowed. Respondent State is directed to fix the pay of Assistant Photographers as if they are serving as Police Photographers in the police department. The say of ld. Sr.Counsel Mr. Nanavati is that the petitioners should be granted this advantage with effect from 1.1.1973. In response thereto, the say of ld. AGP Mr. Joshi is that there should not be any retrospective effect because it may create unreasonably heavy financial burden on the State. On this point also, both the counsel have canvassed their submissions before

the Court and the Court is of the view that amalgamation of these cadres could have been made much earlier immediately after the decision of the ld. Single Judge especially when Letters Patent Appeal preferred by the State Government was not accepted by the Division Bench of this Court. It seems that this Court had allowed the petition of Police Photographers directing the State Government to grant pay-scale with effect from 1.1.1973. Mr. Nanavati has submitted that the present petitioners should be granted that benefit of higher pay-scale from 1.1.1973 or at least from the date of decision of the ld. Single Judge viz. from 16.9.1982. However, it is pertinent to note that the present petitioners have approached this Court in the month of October 1986. It is true that they might have approached the Court in view of the injustice again caused by the next Pay Commission which has recommended the pay-scale with effect from 1.1.1986. As the petitioners are serving in the cadre wherein running pay-scale and actual financial benefits can be divided into two different parts. In the first part, the employees drawing salary in the running pay-scale would get actual financial advantage and the second part would take care of situation notionally viz. notional fixation. The petitioners who were serving on the date of petition in the cadre of Assistant Photographers if granted advantage of higher pay-scale with effect from 1.1.1986, would meet the ends of justice i.e. from the date on which they were granted pay-scale of 4th Pay Commission with effect from 1.1.1986. So, petitioner nos. 1 to 6 are ordered to be placed in the pay-scale of Rs.1400-2600 w.e.f. 1.1.1986 i.e. pay-scale of PF and obviously thereafter they would be entitled to appropriate rise in their pay scale w.e.f. 1.1.1996. There is no promotional post in the department where Police Photographers can be promoted to the higher post. So, these petitioners notionally can be granted advantage of the situation i.e. pay-scale of higher cadre w.e.f. 1.1.1973 till 31.12.1985. So, the petitioners are required to be upgraded notionally w.e.f. 1.1.1973 initially in the pay-scale of Rs.250-480 and thereafter from 1975 in the pay-sale of 475-750 till 31.12.1985. So, the petition of Assistant Photographers is accordingly allowed and respondents are directed to upgrade the petitioners in light of the observations made above. It is necessary to add and observe that backwages require to be granted to the petitioners should be computed within 4 months from the date of receipt of the order and should be paid within 8 weeks from the date of receipt of order. In the same way, the State Government should consider and pass appropriate orders to give proportionate rise and corresponding increase to

Technical Assistants serving in the photography section of the police department with all financial advantages and such decision of the government be given effect to from 1.1.1986. It would be open to the State Government to pass appropriate orders and also for the petitioners to claim respective pay-scales, if in case, during the pendency of this petition, Technical Assistants have been granted promotion and posted in the cadre of Assistant Photographers from the cadre of Technical Assistants.

12. Rule is made absolute accordingly. No costs.

16.10.2002 [C.K. BUCH, J]
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